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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/647,736	10/04/2000	Caroline A M Lebre	36-1358	2449
23117	7590	11/28/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			WINDER, PATRICE L	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/647,736	Applicant(s). LEBRE ET AL.	
	Examiner Patrice Winder	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 13-20, 31 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 13 and 31 recite "a software entity ... tangibly embodying a program of instructions". Applicant's disclosure lacks description of tangible embodiments specifically designated as being "tangible". A software entity is not a tangible embodiment. Therefore, claims 13-20, 31 and 34 do not disclose statutory subject matter.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 6-8, 11-17, 19, 21-23, 25-26 and 28-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Factor, USPN 6,058,423 (hereafter referred to as Factor).

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5. Regarding claim 1, Factor taught a method of processing data in a distributed computing environment wherein a client and a server process data (column 1, lines 44-51), the method comprising

 sending the server from a first place where it communicates with the client, through the distributed computing environment towards a second different place to perform data processing therefrom (column 8, lines 41-56).

6. Regarding dependent claim 2, Factor taught the method further comprising freezing incoming calls for data processing at the first place while it is being sent from the first place to the second place (column 9, lines 18-20, 27-35), and thereafter directing the frozen calls towards the second place to be processed by the server when it has become functional at the second place (column 9, lines 7-17).

7. Regarding dependent claim 3, Factor taught the method further comprising waiting for the server to complete its current processing tasks before sending it to the second place (column 9, lines 7-10, 18-31).

8. Regarding dependent claim 6, Factor taught the method further comprising creating a proxy for the server at the first place, which controls the sending of the server towards the second place (column 5, lines 45-48).

9. Regarding dependent claim 7, Factor taught the method further comprising sending the client towards a different place in the distributed computing environment (column 9, lines 7-17).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4-5, 9-10, 18, 20, 24, and 33-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Factor in view of Cole et al., 6,345,314 B1 (hereafter referred to as Cole).

12. Regarding dependent claim 4, Factor does not specifically teach converting the server's operational configuration. However, Cole taught the method further comprising converting the server from an operational configuration at the first place into a configuration suitable for transmission through the distributed environment to the second place (column 3, lines 28-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Cole's converting into a suitable configuration for transmission in Factor's system for migrating servers would have improved system efficiency. The motivation would have been to transfer the server object without substantial degradation of the communication facility.

13. Regarding dependent claim 5, Cole taught the conversion comprises the serialization of the server (column 3, lines 28-34). For motivation for the combination see claim 4, above.

14. Regarding dependent claim 33, Cole taught the method further comprising deserializing the server after transmission through the distributed environment to the

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second place (column 3, lines 32-34). For motivation for the combination see claim 4, above.

15. The language of claims 8-26, 28-32, 34-47 is substantially the same as previously rejected claims 1-7, 33, above. Therefore, claims 8-26, 28-32, 34-47 are rejected on the same rationale as previously rejected claims 1-7, 33, above.

16. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Factor in view of "official notice".

17. Regarding dependent claim 27, Factor taught the server provided with a proxy (column 5, lines 45-48). Factor does not specifically teach the proxy compatible with CORBA or OLE architecture. However, "official notice" is taken that OLE architecture is well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating compatibility with OLE architecture in Factor's system for migrating servers would have provided enhanced access to documents. The motivation would have been to expand system access to compound document beyond hypertext documents.

Response to Arguments

18. Applicant's arguments filed September 18, 2006 have been fully considered but they are not persuasive.

19. Applicant argues – "This amendment is supported by, for example, Figs.1-2 and corresponding written description of present application."

- a. Applicant's specification lacks antecedent basis for "tangibly embodied".
Being that Applicant's specification lacks reference to "tangibility".

20. Applicant argues – "For example, a server being sent from a first place *through* a distributed computing environment towards a second place is not found in Factor as required by independent claims 1 and 8."

- b. Factor taught in column 1, lines 27-30, that the invention specifically is applicable to any distributed computing environment. Thus, any relocation of system resources is within a distributed computing environment.

21. Applicant argues – "Factor also fails to disclose a software entity for providing a server, the software entity being selectively relocatable to different places *via transmission through* a distributed computing environment as required as required by independent claim 13."

- c. Applicant admits in paragraph 2 of page 13 that Factor taught "... resource X was initially created or born under birth computer 40 and then migrated along path 44 to its current controlling computer." Applicant also admits in paragraph 4 of page 13, that [m]igration is persistent change of ... the owner ... The owner of a resource is changed by destructively copying the logical resource (e.g., moving the backing store for a region of distributed shared memory from one device to another)." Copying is performed between a first device and second device through the transmission medium that connects the devices, which in this case is a network.

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22. Applicant argues – “Sending a server through a distributed computing environment is not disclosed by Factor’s concept of migration.”

d. Factor defines the invention as being specifically applicable to a “distributed computing environment” (see column 1, lines 27-30). Applicant admits that the “migration” occurs when a resource is moved (i.e. sent) within the “distributed computed environment”.

e. Applicant forgets that Factor envision “migration” by “copying”. Clearly, Factor taught a server computer connected through a network. Copying involves the transmission of digital information from one device to another over a transmission medium when both devices are connected to a network.

23. Applicant argues – “However, these teachings are not applicable to the physical ‘migration’ disclosed by Factor.”

f. Factor taught sending data through a “distributed computing environment” by of “destructively copying” which a form of “migration”. Thus, Factor taught ELECTRONIC migration where the data needs to be prepared for transmission. Cole taught how to prepare data for transmission in a “distributed computing environment”, providing a feature Factor lacks.

Conclusion

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrice Winder
Primary Examiner
Art Unit 2145

November 24, 2006